

1 Robert D. Hoffman, SBN 123458  
2 CHARLSTON, REVICH & WOLLITZ LLP  
3 1925 Century Park East, Suite 1250  
4 Los Angeles, California 90067-2746  
5 Phone: (310) 551-7000  
6 Facsimile: (310) 203-9321  
7 e-mail: rhoffman@crwllp.com

8 Attorneys for Plaintiff  
9 ADMIRAL INSURANCE COMPANY

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 ADMIRAL INSURANCE COMPANY, a  
13 Delaware Corporation,

14 Plaintiff,

15 v.

16 BLUE HAVEN NATIONAL  
17 MANAGEMENT, INC., a California  
18 Corporation; P&A HOLDINGS, INC., a  
19 California Corporation; VICTORIA  
20 WILKINS, a California resident,

21 Defendants.

Case No. '08: CV 1103 JM RBB

COMPLAINT OF ADMIRAL  
INSURANCE COMPANY FOR  
DECLARATORY RELIEF  
AND REIMBURSEMENT OF  
DEFENSE PAYMENTS

22 Admiral Insurance Company, for its complaint, alleges:

23 INTRODUCTION

24 1. Admiral Insurance Company ("Admiral") seeks a judicial  
25 determination that it has no duty to defend or indemnify Blue Haven National  
26 Management, Inc. ("BHNMI"), formerly known as Z&E Management, Inc. ("Z&E")  
27 under an employment practices liability insurance policy issued by Admiral to P&A  
28 Holdings, Inc. ("P&A") ("the Admiral Policy") with respect to the claims asserted

1 against BHNH by Victoria Wilkins ("Wilkins") in the action *Victoria Wilkins v.*  
2 *Blue Haven Pools National, Inc., et al.*, San Diego County Superior Court Case No.  
3 37-2007-00078057-CU-OE-CTL ("California Action").

4 2. Admiral seeks, and is entitled to obtain, a judicial declaration that no  
5 potential insurance coverage exists under the Admiral Policy for the claims against  
6 BHNH in the California Action because BHNH does not qualify as an insured  
7 under the Admiral Policy. BHNH is not a named insured under that policy, does  
8 not qualify as a subsidiary of P&A pursuant to the definitions and terms of the  
9 Admiral Policy and was not scheduled as an insured under the Subsidiary  
10 Endorsement to the Admiral Policy.

11 3. Admiral is presently defending, under the Admiral Policy, the claims  
12 in the California Action against defendant Lawrence Katz ("Katz") as well as the  
13 claims against defendants William Unger ("Unger") and Blue Haven Pools  
14 National, Inc. ("Blue Haven Pools") (Katz, Unger and Blue Haven Pools are  
15 collectively referred to as the "Blue Haven Parties") in the action *Victoria Wilkins v.*  
16 *Blue Haven Pools National, Inc., et al.*, District Court of Dallas County F-116th  
17 Judicial District Cause No. 08-00510 ("Texas Action") pursuant to a full and  
18 complete reservation of rights. (The California and Texas Actions are collectively  
19 referred to herein as the "Wilkins Actions").

## 20 21 THE PARTIES

22  
23 4. At all times herein mentioned, plaintiff Admiral was and is a  
24 corporation organized and existing under the laws of the state of Delaware, with its  
25 principal place of business located in Cherry Hill, New Jersey, and a citizen of the  
26 states of Delaware and New Jersey.

27 5. Admiral is informed and believes, and thereon alleges, that at all times  
28 herein relevant, BHNH was and is a corporation organized and existing under the

1 laws of the state of California, with its principal place of business located in  
2 San Diego, California and a citizen of the state of California.

3 6. Admiral is informed and believes, and thereon alleges, that at all times  
4 herein relevant, P&A Holdings, Inc. was and is a corporation organized and existing  
5 under the laws of the state of California, with its principal place of business located  
6 in San Diego, California and a citizen of the state of California.

7 7. Admiral is informed and believes, and thereon alleges, that at all times  
8 herein relevant, Wilkins was and is a resident domiciled in the state of California  
9 and a citizen of the state of California.

10 8. Wilkins has been named as a defendant in this action so as to bind her  
11 to any judicial determination made herein regarding the lack of coverage under the  
12 Admiral Policy for the claims asserted by Wilkins against BHNH. Admiral is  
13 amenable to dismissing Wilkins from this action upon a stipulation that she agrees  
14 to be bound by the judicial determinations made herein.

15  
16 **JURISDICTION AND VENUE**  
17

18 9. This Court has jurisdiction over the subject matter in this action  
19 pursuant to 28 U.S.C. §1332(a)(1) in that the matter in controversy exceeds the sum  
20 of \$75,000, exclusive of interest and costs, and is between citizens of different  
21 states. The amount in controversy is the amount of damages that Wilkins seeks to  
22 recover in the California Action. In the prayer for relief in her complaint in the  
23 California Action, Wilkins alleges that she seeks to recover "compensatory damages  
24 in a sum of not less than \$500,000."

25 10. Pursuant to 28 U.S.C. §1391(a), venue is appropriate in the Southern  
26 District of California because jurisdiction is founded upon diversity of citizenship;  
27 the parties are subject to personal jurisdiction in this District at the time this action

28 ///

1 was commenced and the parties hereto are also parties in the pending California  
2 Actions in San Diego County Superior Court.

### 4 FACTUAL BACKGROUND

#### 6 A. THE WILKINS ACTIONS

8 11. On October 16, 2007, Wilkins filed a complaint for damages in the  
9 California Action against the Blue Haven Parties, BHNM, Phillip Del Negro, Sandy  
10 Del Negro, BRP, Inc. ("BRP"), and Aspen Risk Management Group, Inc.  
11 ("Aspen").

12 12. In that complaint in the California Action, Wilkins alleged the  
13 following causes of action as to the following parties:

- 14 1. Sexual harassment - quid pro quo (Blue Haven Parties, BHNM,  
15 Mr. Del Negro and BRP);
- 16 2. Sexual harassment - hostile work environment (Blue Haven  
17 Parties, BHNM, Mr. Del Negro and BRP);
- 18 3. Retaliation in violation of public policy (Blue Haven Parties,  
19 BHNM, Mr. Del Negro and BRP);
- 20 4. Defamation (the Del Negros, BRP and BHNM);
- 21 5. Wrongful termination in violation of public policy (Blue Haven  
22 Pools, Katz, Mr. Del Negro and BRP);
- 23 6. Negligent infliction of emotional distress (Blue Haven Parties,  
24 BHNM, Mr. Del Negro and BRP);
- 25 7. Intentional infliction of emotional distress (Blue Haven Parties,  
26 BHNM, Mr. Del Negro and BRP);
- 27 8. Negligent misrepresentation (Aspen);
- 28 9. Promissory fraud (Aspen);

10. Fraud (Aspen);
11. Assault and battery (Katz, Unger, BRP, BHNM and Blue Haven Pools);
12. False imprisonment (Katz, Unger, BRP, BHNM and Blue Haven Pools);
13. Negligence (Mr. Del Negro, BRP and BHNM); and
14. Theft (Does 121-130).

13. Wilkins alleges that in or about January 2005, she was first employed by BHNM, and then prior to November 2006, was transferred to BRP. (Complaint ¶15).

14. Wilkins alleges that at a corporate event in Las Vegas from November 28, 2006 to November 30, 2006, she was allegedly subject to a hostile work environment, where inappropriate comments were allegedly made about her to certain vendors by Phillip Del Negro of BRP (Complaint, ¶¶ 17-19).

15. It is alleged that upon returning from Las Vegas, Wilkins allegedly complained to the human resources department about "Del Negro's inappropriate behavior." (Complaint ¶22).

16. According to Wilkins, from that point forward, Del Negro began retaliating against her by allegedly alienating her from other employees and increasing her job burdens. *Id.*

17. Wilkins alleged that she was subjected to sexual harassment in connection with a January 10, 2007 Blue Haven annual sales meeting in Dallas, Texas ("Alleged Dallas Incident"). (Complaint ¶¶ 23-40).

18. Plaintiff alleges that subsequent to the Alleged Dallas Incident, inappropriate remarks were made about her and that she was allegedly suffered various forms of "retaliatory harassment." (Complaint ¶¶ 41-43).

///

1        19. From April 2007 until June 2007, Wilkins allegedly "labored under  
2 defendants' retaliation and defamation," and was terminated from her employment  
3 in June 2007 allegedly without cause or justification. (Complaint ¶47).

4        20. On or about January 3, 2008, Wilkins served a first amended  
5 complaint ("FAC") in the California Action wherein Sandy Del Negro and Aspen  
6 were dropped as defendants and the following causes of action withdrawn: fourth  
7 cause of action for defamation; eighth cause of action for negligent  
8 misrepresentation; ninth cause of action for promissory fraud; tenth cause of action  
9 for fraud; thirteenth cause of action for negligence; and fourteenth cause of action  
10 for theft of confidential information.

11        21. In the FAC, Wilkins added causes of action directed solely to BRP and  
12 BHNH as follows: ninth cause of action for failure to pay overtime; tenth cause of  
13 action for failure to pay for meal and rest periods; eleventh cause of action for  
14 failure to provide accurate wage statements; twelfth cause of action for waiting time  
15 penalties; and thirteenth cause of action for unfair competition.

16        22. On January 16, 2008, Wilkins filed a complaint in the Texas Action  
17 that contained causes of action for assault and battery, false imprisonment, and  
18 intentional infliction of emotional distress against Blue Haven Pools and Unger.

19        23. The claims asserted in the Texas Action had previously been the  
20 subject of claims against Blue Haven Pools and Unger, and certain other defendants,  
21 in the California Action.

22        24. In the Texas Action, plaintiff alleged that she was subjected to sexual  
23 harassment and other alleged wrongdoing in connection with the Alleged Dallas  
24 Incident referred to in the complaints in the California Action.

25        25. On February 14, 2008, Wilkins dismissed, without prejudice, her  
26 claims against Blue Haven Pools and Unger in the California Action.

27 ///

28 ///

1 **B. THE UNDERWRITING OF THE ADMIRAL POLICY**

2  
3 26. In October 2006, a renewal proposal form ("Renewal Proposal Form")  
4 was submitted to Admiral's agent Monitor Liability Managers, Inc. ("Monitor") for  
5 the renewal of an employment practices liability insurance policy that had been  
6 issued to P&A for the policy period November 5, 2005 to November 5, 2006 ("2005  
7 Policy").

8 27. In response to Question No. 16 of the Renewal Proposal Form  
9 requesting information on subsidiaries of P&A, the box "none" was checked.

10 28. Attached hereto as Exhibit "A" is a true and correct redacted copy of  
11 the Renewal Proposal Form.

12 29. On November 1, 2006, Monitor issued a quotation for the Admiral  
13 Policy.

14 30. On November 9, 2006, after the 2005 Policy had expired, surplus lines  
15 broker Crump Financial Services, Inc. ("Crump") requested Monitor to issue a  
16 binder for the Admiral Policy.

17 31. On November 9, 2006, Monitor issued a binder ("Binder") for the  
18 Admiral Policy that contained, among others, the following condition precedent  
19 ("Subsidiary Condition"):

20           **WITHIN 15 DAYS OF BINDING:** Please supply an updated  
21 list of all subsidiaries or confirm all subsidiaries are as per the  
22 expiring policy.

23 32. The Binder was effective for 30 days and was to expire on  
24 December 9, 2006.

25 33. The Binder contained the following language: "Upon receipt and  
26 review of the Proposal Form and any related information, documentation, or  
27 conditions, Monitor reserves the right to cancel, modify or limit the coverage  
28 provided by this binder."



1        34. On December 10, 2006, Monitor issued to Crump a Notice of Non-  
2 Payment of Premium that stated that the Binder had expired on December 9, 2006  
3 without payment of the appropriate premium and that also stated that the Subsidiary  
4 Condition had not been satisfied.

5        35. On December 22, 2006, Crump provided Monitor with a "Named  
6 Insured Schedule" ("Schedule") and requested that 9 entities that had been on the  
7 subsidiary endorsement to the 2005 Policy be deleted from the subsidiary  
8 endorsement to the Admiral Policy.

9        36. The Schedule contained information on the owners of the stock of  
10 certain entities proposed to be listed on the subsidiary endorsement to the Admiral  
11 Policy.

12        37. According to the Schedule, P&A the named insured, had no ownership  
13 interest in Z&E, an entity that had been listed on the subsidiary endorsement to the  
14 2005 Policy.

15        38. On December 28, 2006, Monitor's underwriter advised Crump in an e-  
16 mail that she sought to "make sure I am only listing on the policy the correct  
17 subsidiaries."

18        39. The December 28, 2006 Monitor e-mail to Crump stated that "We will  
19 not cover any entity that is not 'more than' 50% owned by the named insured."  
20

21        **C. THE ISSUANCE OF THE ADMIRAL POLICY**  
22

23        40. On February 21, 2007, the Admiral Policy was issued to P&A for the  
24 policy period November 5, 2006 to August 1, 2007 bearing policy no. 4714156/1  
25 with a limit of liability, inclusive of damages and costs of defense, of \$1 million for  
26 each claim and \$1 million in the aggregate for all claims, with a \$25,000 deductible.

27        41. Attached hereto as Exhibit "B" is a true and correct copy of the  
28 Admiral Policy.



42. The insuring agreement of the Employment Practices Liability Insurance Coverage Section (Form EPL 4300 01-06) ("EPL Coverage Form") of the Admiral Policy provides as follows:

**I. Insuring Agreement**

**Employment Practices Liability Insurance**

This **Policy** shall pay on behalf of the **Insureds** all **Loss** arising from any **Claim** first made against the **Insureds** during the **Policy Period** and reported to the **Insurer** in writing during the **Policy Period** or within 90 days thereafter, for any **Wrongful Act**.

43. The Admiral Policy contains the following definitions of certain terms that appear in the EPL Coverage Form:

**III. Additional Definitions**

In addition to the Definitions listed in Section III. of the Common Policy Terms and Conditions Section, whenever printed in boldface type, and whether in the singular or plural form, in this **Coverage Section** the following terms shall have the meanings indicated below.

E. "**Harassment**" means unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal, visual or physical conduct of a sexual or non-sexual nature that:

1. is explicitly or implicitly made a condition of employment, or
2. are used as a basis for employment decisions, or
3. create a work environment that interferes with performance.

**Harassment** also means assault or battery, but only if related to a charge of sexual harassment.

F. "**Insured(s)**" means:

1. any director, officer, or **Employee** of an **Insured Entity** while acting solely within the course and scope of employment with the **Insured Entity**, or

2. an **Insured Entity**.

This **Coverage Section** shall cover **Loss** arising from a **Claim** made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an individual **Insured** for a **Claim** arising solely out of his or her status as the spouse of an individual **Insured**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the individual **Insured** and the spouse, or property transferred from the individual **Insured** to the spouse; provided, however, this extension shall not afford coverage for any **Claim** for any **Wrongful Act** of the spouse, but shall apply only to **Claims** arising out of any **Wrongful Act** of an individual **Insured**.

\* \* \*

J. "**Wrongful Act(s)**" means any actual or alleged act by an **Insured** arising from an actual or potential employment relationship with the claimant for:

1. discrimination or **Harassment** because of race, color, religion, age, sex, disability, pregnancy, national origin, sexual orientation, marital status, or any other basis prohibited by law which results in termination of the employment relationship, or demotion or failure or refusal to hire or promote, or failure to accommodate an **Employee** or potential **Employee**, or denial of an employment privilege, or the taking of any adverse or differential employment action, or
2. sexual **Harassment** including unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature that is made a condition of employment, is used as a basis for employment decisions, or creates an intimidating, hostile or offensive work environment that interferes with work performance, or
3. termination, constructive discharge, wrongful failure to hire, wrongful demotion, negligent retention, negligent supervision, negligent hiring, retaliation, misrepresentation, infliction of emotional distress, defamation, invasion of privacy, humiliation, wrongful evaluation, or breach of any implied contract or implied agreement relating to employment, whether arising out of any personnel manual, policy statement or oral representation.

///

///

44. The Common Policy Terms and Conditions Section ("Common Policy Form") contains the following definitions of terms that appear in the Admiral Policy:

### III. Definitions

Whenever printed in boldface type and whether in the singular or plural form in this **Policy**, the following terms shall have the meanings indicated below.

\* \* \*

B. "**Insured Entity**" means the **Named Insured** and any **Subsidiary**.

\* \* \*

H. "**Subsidiary(ies)**" means:

1. an entity of which the **Named Insured** owns on or before the inception of the **Policy Period** more than 50 percent of the issued and outstanding voting stock either directly or indirectly through one or more of its **Subsidiaries**, or
2. an entity, subject to the terms of Section V.A. of the **Coverage Section(s)**, that the **Insured Entity** forms or acquires during the **Policy Period**.

45. The Admiral Policy contains an endorsement entitled "Addition to Section III.H. Addition of Subsidiary" (form CT 43091 01-06) ("Subsidiary Endorsement") that amends the definition of "**Subsidiary**" in the Common Policy Form and states in part as follows:

In consideration of the premium paid for this **Policy**, it is understood and agreed that Section III. Definitions H. "**Subsidiary**" of the Common Policy Terms and Conditions Section of this Policy is amended by the addition of the following:

III. H.: It is further understood and agreed that **Subsidiary** shall also include the following:

\* \* \*

///

1 46. Z&E did not qualify as a subsidiary of P&A under Section III.H. of the  
2 Common Policy Form of the Admiral Policy.

3 47. Z&E was not one of the entities listed on the Subsidiary Endorsement  
4 to the Admiral Policy.

5  
6 **D. ADMIRAL'S DEFENSE OF THE WILKINS ACTIONS**

7  
8 48. On November 13, 2007, Monitor, on behalf of Admiral, advised  
9 counsel for P&A that the only parties to the California Action who potentially  
10 qualified as insureds under the Admiral Policy were Blue Haven Pools, and Katz  
11 and Unger in their capacity as officers or directors of Blue Haven Pools.

12 49. On November 13, 2007, Monitor advised counsel for P&A that neither  
13 BHNH, BRP nor the Del Negros qualified as insureds under the Admiral Policy.

14 50. On November 13, 2007, Monitor agreed to defend the claims against  
15 the Blue Haven Parties in the California Action under the Admiral Policy pursuant  
16 to a full and complete reservation of rights.

17 51. On December 2, 2007, Monitor issued a further reservation of rights  
18 regarding the defense of the claims against the Blue Haven Parties under the  
19 Admiral Policy.

20 52. On April 8, 2008, Admiral agreed to defend the claims against the  
21 Blue Haven Parties in the Texas Action under the Admiral Policy pursuant to a full  
22 and complete reservation of rights.

23  
24 **FIRST CLAIM FOR RELIEF**

25 (Declaratory Relief - No Potential For Coverage As to All Defendants)

26  
27 53. Admiral refers to the foregoing paragraphs 1 through 52, and  
28 incorporates the same herein by this reference.

1        54. An actual controversy has arisen and now exists between Admiral and  
2 BHNH in that Admiral contends, and is informed and believes, that BHNH denies,  
3 that BHNH does not qualify as an insured under the Admiral Policy and that no  
4 potential coverage exists under the Admiral Policy with respect to any claims  
5 asserted by Wilkins against BHNH because BHNH does not qualify as an insured  
6 under the Admiral Policy.

7        55. Admiral seeks, and is entitled to obtain, a judicial declaration that  
8 BHNH does not qualify as an insured under the Admiral Policy, and that as a result,  
9 Admiral has no duty to defend or indemnify BHNH or any defendant in the Wilkins  
10 Actions in their capacity as an officer, director and/or employee of BHNH with  
11 respect to the claims asserted by Wilkins.

12  
13                                    **SECOND CLAIM FOR RELIEF**

14                    (Reimbursement of Defense Fees and Costs as to BHNH)

15  
16        56. Admiral refers to the foregoing paragraphs 1 through 52, and  
17 incorporates the same herein by this reference.

18        57. An actual controversy has arisen and now exists between Admiral and  
19 BHNH in that Admiral contends, and is informed and believes, that BHNH denies,  
20 that if a declaration is issued that no potential coverage exists under the Admiral  
21 Policy for the claims asserted by Wilkins against BHNH, that Admiral is entitled to  
22 recover from BHNH legal fees and costs and other expenses incurred by Admiral  
23 pursuant to the Admiral Policy to defend the California Action that are allocable to  
24 claims against BHNH and/or claims against any defendant in the Wilkins Actions  
25 acting in their capacity as an officer, director and/or employee of BHNH.

26        58. Admiral seeks, and is entitled to obtain, an order that it is entitled to  
27 recover from BHNH legal fees and costs and other expenses incurred by Admiral  
28 pursuant to the Admiral Policy in connection with the defense of claims by Wilkins

1 that are allocable to BHNМ and/or any defendant in the Wilkins Actions acting in  
2 their capacity as an officer, director and/or employee of BHNМ.

3  
4 WHEREFORE, Admiral prays for judgment as follows:

- 5 1. For a declaration that BHNМ does not qualify as an insured under the  
6 Admiral Policy;
- 7 2. For a declaration that no potential coverage exists under the Admiral  
8 Policy for any of the claims against BHNМ with respect to the Wilkins  
9 Actions;
- 10 3. For a declaration that no potential coverage exists under the Admiral  
11 Policy for any of the claims against defendants in the Wilkins Actions  
12 acting in their capacity as an officer, director and/or employee of  
13 BHNМ;
- 14 4. For a declaration that Admiral owes no duties or obligations of any  
15 nature or kind, including but not limited to, any duty to defend or  
16 indemnify BHNМ or any defendant acting in their capacity as an  
17 officer, director and/or employee of BHNМ in connection with the  
18 Wilkins Actions;
- 19 5. For an order that Admiral is entitled to recover from BHNМ all legal  
20 fees, costs and other expenses incurred by Admiral for the defense of  
21 claims by Wilkins that are allocable to BHNМ and/or defendants;  
22 acting in their capacity as officers, directors and employees of BHNМ;
- 23 6. For pre-judgment and post-judgment interest on any amounts awarded  
24 to Admiral;
- 25 7. For Admiral's costs of suit incurred herein; and

26 ///

27 ///

28 ///

1 8. For such other and further relief as the Court deems appropriate.  
2

3 Dated: June 20, 2008

CHARLSTON, REVICH & WOLLITZ LLP  
ROBERT D. HOFFMAN

4  
5 By:   
6 Robert D. Hoffman  
7 Attorneys for Plaintiff  
8 ADMIRAL INSURANCE COMPANY  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28





## Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

Renewal  
Proposal Form

## Employment Practices Liability Insurance

## CLAIMS MADE WARNING FOR APPLICATION

THIS PROPOSAL FORM IS FOR A CLAIMS MADE POLICY, RELATING TO CLAIMS MADE AGAINST THE  
INSURED DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE.

Whenever printed in this Proposal Form, the terms in boldface type shall have the same meanings as indicated in the Policy. This Proposal Form is to be completed with respect to the entire Insured Entity. Insured Entity as used herein is defined to include the Named Insured and any Subsidiaries.

Name of Named Insured P+A Holdings, Inc.  
 Street Address 636 Broadway, Third Floor Suite \_\_\_\_\_  
 City San Diego, CA State CA Zip Code 92101

The Officer designated as agent of the Insured Entity and of all Insureds to receive any and all notices from the Insurer or their authorized representatives concerning this Insurance:

Name CHRIS WATERS Title V. PRESIDENT E-mail Address CWaters@bluchaven.com

## General Information (Provide details to all "Yes" answers by attachment)

- Form of organization: ☒ Corporation ☐ Sole Proprietorship ☐ Joint Venture  
☐ Partnership ☐ Limited Liability Corporation ☐ Other: \_\_\_\_\_
  - The Named Insured has been in continuous operation since: 1994 REDACTED
  - What is the Named Insured's Federal Employer Identification Number (FEIN) or Taxpayer Identification Number: \_\_\_\_\_
  - (a) What is the Insured Entity's Primary Standard Industry Code (SIC): \_\_\_\_\_  
 (b) Describe the Insured Entity's nature of operations: HOLDING COMPANY FOR BLUEHAVEN BOLS
  - (a) Within the last 12 months, has the Insured Entity been involved in any bankruptcy proceeding? ☐ Yes ☒ No  
 (b) Within the next 12 months, is the Insured Entity contemplating filing a petition for protection under the bankruptcy code? ☐ Yes ☒ No
  - (a) Within the last 12 months, has the Insured Entity had any Subsidiary, plant, facility, branch or office closings, consolidations or layoffs? ☐ Yes ☒ No  
 (b) Within the next 24 months, does the Insured Entity anticipate any Subsidiary, plant, facility, branch or office closings, consolidations or layoffs? ☐ Yes ☒ No
- If "Yes", provide the following details by attachment: Date of event; number of Employees affected; whether outside employment counsel was consulted; and, whether severance packages were offered to all Employees affected.

## Current Employee Information (Provide details to all "Yes" answers by attachment)

- (a) Number of Employees: Do not include Leased Employees or Independent Contractors in numbers below.  

	Full Time	Part Time	Seasonal	Temporary
Current Year:	<u>413</u>	<u>1</u>		
Prior Year:	<u>433</u>	<u>5</u>		

  
 (b) How many Leased Employees does the Insured Entity employ annually? 0  
 (c) How many Independent Contractors does the Insured Entity employ annually? 468  
 (d) What is the Insured Entity's annual employee turnover rate for the last 12 months? 2 %
- Within the last 12 months, has there been any change (resignations, departures, retirements, etc.) in the position of the Chairman of the Board, President, Chief Executive Officer or Chief Financial Officer? ☒ Yes ☐ No  
 If "Yes", provide the following details by attachment: Name of individual and date of change.
- What percentage of the Insured Entity's employees currently earns more than \$75,000? REDACTED

\* Ronald Zaborek Retired (former President & CEO)

The term Policy is hereby amended to read Policy  
 and the term Wrongful Employment Act(s) is hereby  
 amended to read Wrongful Act(s) wherever they  
 appear in this Proposal Form.

**Admiral Insurance Company**

10. Does the Insured Entity (provide details to "No" answers by attachment):
- (a) Currently employ a full time Human Resources professional? ☒ Yes ☐ No
  - (b) Utilize employment applications for all prospective Employees? ☒ Yes ☐ No
  - (c) Require the Human Resource Department to review and approve each proposed Employee termination? ☐ Yes ☒ No
  - (d) Have outside employment counsel review each proposed Employee termination? ☒ Yes ☐ No
  - (e) Conduct mandatory periodic Employee education regarding prohibited forms of harassment? ☒ Yes ☐ No
  - (f) Periodically have its employment policies and procedures reviewed by outside employment counsel? ☒ Yes ☐ No
  - (g) Periodically have its employment policies and procedures distributed to all Employees? ☒ Yes ☐ No
11. Indicate which formal written policies and procedures have been implemented and attach a copy of each.  
If "None", so state. ☐ None
- ☒ Employee Handbook / Manual
  - ☒ Anti-Discrimination Policy – Equal Employment Opportunity (EEO) Policy
  - ☒ Anti-Harassment Policy, including Sexual Harassment
  - ☐ Adherence to Employment "at-will" relationship with all Employees
  - Employers with more than 50 Employees
  - ☒ Family Medical Leave Act
  - California Employers Only
  - ☒ California Family Rights Act

**Litigation and Claim Information (Provide details to all "Yes" answers by attachment)**

12. During the last 5 years, has the Insured Entity or any of its directors, officers or Employees known of, or been involved in any lawsuit, charges, inquiries, investigations, grievances or other administrative hearings or proceedings before any of the following agencies and/or in any of the following forums, including both domestic or foreign equivalents?
- (a) National Labor Relations Board? ☐ Yes ☒ No
  - (b) Equal Employment Opportunity Commission? ☐ Yes ☒ No
  - (c) Office of Federal Contract Compliance Programs? ☐ Yes ☒ No
  - (d) U.S. Department of Labor? ☐ Yes ☒ No
  - (e) Any state or local government agency such as the Labor Department or fair employment agency? ☐ Yes ☒ No
  - (f) U.S. District or state court? ☐ Yes ☒ No
13. During the last 5 years, has any current or former Employee or third party made any Claim, or otherwise alleged discrimination, harassment, wrongful discharge and/or Wrongful Employment Acts against the Insured Entity or its directors, officers or Employees? ☒ Yes ☐ No
- A Claim is not limited to the filing of a lawsuit or complaint with the Equal Employment Opportunity Commission or similar state or local agency. A Claim may also include a written demand or threat by any current or former Employee seeking relief in connection with an employment-related dispute or grievance.

**IF "YES" TO ANY PART OF QUESTIONS 12. OR 13., PROVIDE FULL DETAILS FOR EACH ALLEGATION, EVEN IF THE MATTER HAS SINCE BEEN SETTLED OR OTHERWISE RESOLVED, BY COMPLETING A CLAIM SUPPLEMENTAL FORM EPL 4610 OR, BY PROVIDING THE FOLLOWING INFORMATION FOR EACH ALLEGATION BY ATTACHMENT:**

(a) Date Claim first made	(b) Claimant's Name	(c) Allegation	(d) Current Status
(e) Demand Amount	(f) Settlement (Indemnity) or Reserve Amount	(g) Attorney's fees	

## Admiral Insurance Company

## Previous Insurance Information (Provide details to all "Yes" answers by attachment)

14. Provide the following information regarding the Insured Entity's Employment Practices Liability insurance for the current policy year. If "None", so state. ☐ None
- | Insurance Carrier | Expiration Date | Limit of Liability | Retentions | Premium |
|-------------------|-----------------|--------------------|------------|---------|
| Admiral INS CO    | 11/5/06         | \$                 | \$         | \$      |
15. Has the Extended Reporting Period (or Discovery Period) been exercised for the Insured Entity's most recent Employment Practices Liability Policy? ☐ Yes ☒ No

## Documents Required

16. Provide details to all "Yes" answers, when applicable, by attachment
17. Provide the following information on all Subsidiaries of the Insured Entity. If "None", so state. ☒ None
- | (a) Name | (b) Percent of ownership<br>(if less than 100 percent,<br>list minority owners) | (c) Nature of business | (d) Domestic or foreign |
|----------|---------------------------------------------------------------------------------|------------------------|-------------------------|
|          |                                                                                 |                        |                         |
18. Provide the following information on all plants, facilities, branches or offices of the Insured Entity. If "None", so state. ☐ None
- | (a) Location | (b) Domestic or foreign | (c) Estimated number of Employees |
|--------------|-------------------------|-----------------------------------|
|              |                         | 413                               |

IT IS UNDERSTOOD AND AGREED THAT COVERAGE IS NOT PROVIDED FOR SUBSIDIARIES IN QUESTION 17. UNLESS THE INFORMATION REQUESTED ABOVE IS PROVIDED BY ATTACHMENT. ALSO, PROVIDE DETAILS TO QUESTION 18. BY ATTACHMENT, AS APPROPRIATE.

## Please Read Carefully

The undersigned, acting on behalf of all Insureds, declare that the statements set forth herein are true and correct and that thorough efforts have been made to obtain sufficient information from each and every Insured proposed for this insurance to facilitate the proper and accurate completion of this Proposal Form.

The undersigned agree that the particulars and statements contained in the Proposal Form and any material submitted herewith are their representations and that they are material and are the basis of the insurance contract. The undersigned further agree that the Proposal Form and any material submitted herewith shall be considered attached to and a part of the Policy. Any material submitted with the Proposal Form shall be maintained on file (either electronically or paper) with the insurer and shall be deemed to be attached hereto as if physically attached.

It is further agreed that:

- if any significant change in the condition of the applicant is discovered between the date of this Proposal Form and the Policy inception date, which would render this Proposal Form inaccurate or incomplete, notice of such change will be reported in writing to the insurer immediately;
- any Policy, if issued, will be in reliance upon the truth of such representations; provided, however, with respect to such statements and representations, no knowledge or information possessed by any Insureds, except for those person or persons who executed the Proposal Form, shall be imputed to any other Insureds and further provided that if any person who executed the Proposal Form knew that such statement or representation was inaccurate or incomplete, then this Policy will be void as to all Insureds;
- this Proposal Form has been completed as respects the entire Insured Entity;
- the signing of this Proposal Form does not bind the undersigned to purchase the insurance.

LARRY M. KATZ	Title: President CEO
Chairman of the Board of Directors, President, or Chief Executive Officer	
Chris Walters	Dated: 8/31/06
Print Name and Title	
CHRIS WALTERS JR. & JNO. ADMINISTRATOR	Dated: 8/31/06
Human Resources Manager (or equivalent position)	

This Carolina Casualty Insurance Company Proposal Form, including any material submitted herewith, shall be held in strictest confidence.

**A POLICY CANNOT BE ISSUED UNLESS THE PROPOSAL FORM IS PROPERLY SIGNED AND DATED.**

Please submit this Proposal Form including appropriate documentation to:

Monitor Liability Managers, Inc., 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039

G.S. Levine Insurance Services	Dated: 9/28/06
Submitted by (PRODUCER)	
Cindy Anderson	0A91059
AGENT'S NAME (Print Name)	AGENT'S LICENSE NUMBER

## Admiral Insurance Company

**NOTICE TO COLORADO APPLICANTS:** IT IS UNLAWFUL TO KNOWINGLY PROVIDE FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE COMPANY. PENALTIES MAY INCLUDE IMPRISONMENT, FINES, DENIAL OF INSURANCE, AND CIVIL DAMAGES. ANY INSURANCE COMPANY OR AGENT OF AN INSURANCE COMPANY WHO KNOWINGLY PROVIDES FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO A POLICY HOLDER OR CLAIMANT FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE POLICY HOLDER OR CLAIMANT WITH REGARD TO A SETTLEMENT OR AWARD PAYABLE FROM INSURANCE PROCEEDS SHALL BE REPORTED TO THE COLORADO DIVISION OF INSURANCE WITHIN THE DEPARTMENT OF REGULATORY AGENCIES.

**NOTICE TO NEW YORK APPLICANTS:** ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME, AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION.

**NOTICE TO NEW MEXICO, PENNSYLVANIA APPLICANTS:** ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES.

**NOTICE TO APPLICANTS OF KENTUCKY:** ANY PERSON WHO KNOWINGLY, AND WITH INTENT TO INJURE, DEFRAUDS OR DECEIVES ANY INSURER OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM FOR THE PROCEEDS OF AN INSURANCE POLICY CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, IS GUILTY OF A CRIME AND IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.

**NOTICE TO APPLICANTS OF FLORIDA, MINNESOTA, NEW JERSEY, OHIO, AND OKLAHOMA:** ANY PERSON WHO KNOWINGLY, AND WITH INTENT TO INJURE, DEFRAUDS OR DECEIVES ANY INSURER OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM FOR THE PROCEEDS OF AN INSURANCE POLICY CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, IS GUILTY OF A FELONY AND IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.

**NOTICE TO DISTRICT OF COLUMBIA, MAINE, MASSACHUSETTS, TENNESSEE, AND VIRGINIA APPLICANTS:** IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE OR MISLEADING INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING THE COMPANY. PENALTIES INCLUDE IMPRISONMENT, FINES AND DENIAL OF INSURANCE BENEFITS.



## P&A HOLDINGS, INC.

P.O. Box 126878 • San Diego, CA 92112  
(619) 233-3522 • fax: (619) 233-3557 • [www.bluehaven.com](http://www.bluehaven.com)

September 7, 2006

Carolina Casualty Insurance Company  
4600 Touchton Road East, Bldg. 100, Suite 400  
Jacksonville, FL 32246

Re: Employment Practices Liability Insurance: Answer to question 13 on application

Date First Notified:

**REDACTED**

Name(s):

Allegation:

**REDACTED**

Current Status: Pre-litigation discovery, mediation unsuccessful

Demand Amount: Non Made Yet

Attorney's Fees:

**REDACTED**





**Admiral Insurance Company**

1255 Caldwell Road, Cherry Hill, NJ 08034

Declarations Page

**Employment Practices Liability Insurance****CLAIMS MADE WARNING FOR DECLARATIONS**

**NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY "CLAIM" FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD (IF APPLICABLE).**

**PLEASE READ AND REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.**

Whenever printed in this Declarations Page, the boldface type terms shall have the same meanings as indicated in the Policy.

- Item 1. Name and Address of **Named Insured**:  
P & A Holdings, Inc.  
Suite 310  
636 Broadway  
San Diego, CA 92101  
Person designated to receive all correspondence from the Insurer:  
Chris Waters  
Vice President  
Policy Number: 4714156 / 1
- Item 2. **Policy Period**: From November 5, 2006 (inception date) to August 1, 2007 (expiration date)  
*(Both dates at 12:01 a.m. Standard Time at the address of the **Named Insured**)*
- Item 3. **Purchased Coverage Sections**:  
Employment Practices Liability Insurance Coverage Section: ☒ Yes ☐ No
- Item 4. **Limit of Liability for the Policy Period (inclusive of Damages and Costs of Defense)**:  
A. \$1,000,000 each Claim, but in no event exceeding  
B. \$1,000,000 in the aggregate for all Claims
- Item 5. **Applicable Deductibles**:  
Employment Practices Liability Insurance Coverage Section: \$25,000
- Item 6. **Premium**: \$18,195
- Item 7. **Prior and Pending Litigation Dates**:  
Employment Practices Liability Insurance Coverage Section: November 5, 2001
- Item 8. **Extended Reporting Period**:  
Option 1: 12 months for 100.00 percent of the "full annual premium"  
Option 2: 24 months for 150.00 percent of the "full annual premium"  
Option 3: 36 months for 200.00 percent of the "full annual premium"
- Item 9. **Forms and Endorsements attached**:  
Policy Form: CT 2340 (01-06); EPL 4300 (01-06)  
CT 41001 (01-06) Incorporated Agreement with Enhanced Severability  
CT 41200 (01-06) Service of Suit  
CT 43091 (01-06) Addition to Section III. H. Addition of Subsidiary  
CT 44900 (01-06) Addition to Section IV. Certified Acts of Terrorism Exclusion  
CT 45014 (01-06) Addition to Section V. Waiver of Deductible if No Liability  
EPL 43055 (01-06) Modification to Section III. D. Independent Contractor Carve-out  
EPL 43113 (01-06) Addition to Section III. J. Third Party Liability Coverage
- Item 10. Notice to the Insurer as provided in sections VII. A. and VII. B. of the Common Policy Terms and Conditions Section of this Policy shall be sent to: Monitor Liability Managers, Inc., Claims Department  
Address: 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039  
Fax: (847) 806-4017  
Email: newclaim@monitorliability.com

EPL 4301 (01-06)

Page 1 of 2

EXHIBIT B

021

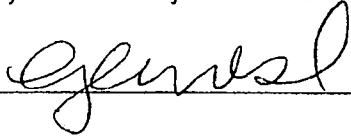
All other notices required to be given to the Insurer under this Policy shall be sent to: Monitor Liability Managers, Inc.

Address: 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039

Fax: (847) 806-6282

The Employment Practices Liability Insurance Policy shall constitute the contract between the Insureds and the Insurer.

Authorized Representative: \_\_\_\_\_



Date Issued: February 21, 2007

**Admiral Insurance Company**

1255 Caldwell Road, Cherry Hill, New Jersey 08034

## **CALIFORNIA DISCLOSURE NOTICE**

- 1. THE INSURANCE POLICY THAT YOU HAVE PURCHASED IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINES" INSURERS.**
- 2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT WHICH APPLIES TO CALIFORNIA LICENSED INSURERS.**
- 3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.**
- 4. CALIFORNIA MAINTAINS A LIST OF ELIGIBLE SURPLUS LINES INSURERS APPROVED BY THE INSURANCE COMMISSIONER. ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST.**
- 5. FOR ADDITIONAL INFORMATION ABOUT THE INSURER YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINES" BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE AT THE FOLLOWING TOLL-FREE NUMBER: 1-800-927-4357.**
- 6. IF YOU, AS THE APPLICANT, REQUIRED THAT THE INSURANCE POLICY YOU HAVE PURCHASED BE BOUND IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE WITHIN TWO BUSINESS DAYS, AND YOU DID NOT RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS POLICY WITHIN FIVE DAYS OF RECEIVING THIS DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM WILL BE PRORATED AND ANY BROKER FEE CHARGED FOR THIS INSURANCE WILL BE RETURNED TO YOU.**

**Admiral Insurance Company**

1255 Caldwell Road, Cherry Hill, NJ 08034

Page 1 of 1

## Incorporated Agreement with Enhanced Severability

By acceptance of this proposal, the Chairperson of the Board of Directors, President, or Chief Executive Officer, acting on behalf of all **Insureds**, declare that the statements set forth in the accepted EPL 24515 (rev. 10-01) application are true and correct and that thorough efforts have been made to obtain sufficient information from each and every **Insured** proposed for this insurance to facilitate the proper and accurate completion of the accepted application. The accepted application shall constitute the "Proposal Form".

The Chairperson of the Board of Directors, President, or Chief Executive Officer agree that the particulars and statements contained in the Proposal Form and any material submitted therewith are their representations and that they are material and are the basis of the insurance contract. The Chairperson of the Board of Directors, President, or Chief Executive Officer further agree that the Proposal Form and any material submitted therewith shall be considered attached to and a part of the **Policy**. Any material submitted with the Proposal Form shall be maintained on file (either electronically or paper) with the **Insurer** and shall be deemed to be attached hereto as if physically attached.

It is further agreed that:

- if any significant change in the condition of the applicant is discovered between the date of the Proposal Form and the **Policy** inception date, which would render the Proposal Form inaccurate or incomplete, notice of such change will be reported in writing to the **Insurer** immediately;
- any **Policy**, if issued, will be in reliance upon the truth of such representations; provided, however, with respect to such statements and representations, no knowledge or information possessed by any **Insureds** shall be imputed to any other **Insureds**. If any person or persons knew as of the **Policy** inception date that such declarations and statements contained in the Proposal Form were untrue, inaccurate or incomplete, then this **Policy** will be void as to that person or persons. However, if the Chairperson of the Board of Directors, President, Chief Executive Officer, or Chief Financial Officer of the **Insured Entity** knew as of the **Policy** inception date that such declarations and statements contained in the Proposal Form were untrue, inaccurate or incomplete, then this **Policy** will be void as to that person or persons and the **Insured Entity**;
- the Proposal Form has been completed as respects the entire **Insured Entity**.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

<b>Insured</b> P & A Holdings, Inc.	<b>Policy Number</b> 4714156/1
<b>Effective Date of This Endorsement</b> 11/05/2006	<b>Authorized Representative</b> 
EPL 4300 (01-06)	16868-714156-421093
CT 41001 (01-06)	

**Admiral Insurance Company**

1255 Caldwell Road, Cherry Hill, NJ 08034

Page 1 of 1

**Service of Suit**

It is understood and agreed that in the event of the failure of the **Insurer** hereon to pay any amount claimed to be due hereunder, the **Insurer** will submit to the jurisdiction of any court of competent jurisdiction within the United States of America or Canada, will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court. Nothing in this endorsement constitutes or should be understood to constitute a waiver of the **Insurer's** rights to commence an action in any court of competent jurisdiction in the United States or Canada, to remove an action to a United States District Court, or to seek a transfer of an action to another court as permitted by law.

It is further agreed that service of process in such suit may be made upon Daniel A. MacDonald, Senior Vice President of Admiral Insurance Company, 1255 Caldwell Road, P.O. Box 5725, Cherry Hill, New Jersey 08034-3220, or his designee, and that in any suit instituted against any one of them upon this contract, the **Insured Entity** will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named is authorized and directed to accept service of process on behalf of the **Insurer** in any such suit and/or upon the request of the **Insured** (or **Reinsured**) to give a written undertaking to the **Insured** (or **Reinsured**) that it or they will enter a general appearance upon the **Insurer's** behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America or province of Canada, which makes provision therefor, the **Insurer** hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** (or **Reinsured**) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and the **Insurer** hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured P & A Holdings, Inc.	Policy Number 4714156/1
Effective Date of This Endorsement 11/05/2006	Authorized Representative

EPL 4300 (01-06)

16870-714156-421093

CT 41200 (01-06)

EXHIBIT B

025

**Admiral Insurance Company**

1255 Caldwell Road, Cherry Hill, NJ 08034

Page 1 of 1

### Addition to Section III. H. Addition of Subsidiary

In consideration of the premium paid for this **Policy**, it is understood and agreed that section III. Definitions H. "**Subsidiary**" of the Common Policy Terms and Conditions Section of this **Policy** is amended by the addition of the following:

III. H.: It is further understood and agreed that **Subsidiary** shall also include the following:

Blue Haven Pools of Southern California, Inc.

Pool Construction By BH, Inc.

BHPCSC, Inc.

BHSB, Inc.

Blue Haven Construction Co., Inc.

Blue Haven Pools National, Inc.

Blue Haven Pools of Georgia, Inc.

Blue Haven Pools of Louisiana, Inc.

Blue Haven Pools of Tampa, Inc.

Blue Haven Pools of West Palm Beach, Inc.

Capitol Blue Haven Pools, Inc.

Diving Lady of Arizona, Inc.

Diving Lady, Inc.

Haven Construction, Inc.

Par Pools, Inc.

BHNB Pool Construction, Inc.

Pools By Design, Inc.

Twenty-First Century Tucson Arizona

BH-Raleigh, Inc.

BH Pool Construction, Inc.

BH Pools of Upstate - SC, Inc.

BH Pools of Houston

Z&E, LLC

Golden State Industries of Nevada, Inc.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured P & A Holdings, Inc.	Policy Number 4714156/1
Effective Date of This Endorsement 11/05/2006	Authorized Representative
EPL 4300 (01-06)	16887-714156-421093 CT 43091 (01-06)

**Admiral Insurance Company**

1255 Caldwell Road, Cherry Hill, NJ 08034

Page 1 of 1

### Addition to Section IV. Certified Acts of Terrorism Exclusion

In consideration of the premium paid for this Policy, it is understood and agreed that:

1. Section IV. Exclusions of the Common Policy Terms and Conditions Section of this Policy is amended by the addition of the following:
  - IV.: based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any injury or damage arising out of a **Certified Act of Terrorism**.
2. Solely for the purposes of the provisions of this endorsement, section III. Definitions of the Common Policy Terms and Conditions Section of this Policy is amended by the addition of the following:
  - III.: "**Certified Act of Terrorism**" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002.

The federal Terrorism Risk Insurance Act of 2002 sets forth the following criteria for a **Certified Act of Terrorism**.

- a. The act resulted in aggregate losses in excess of \$5 million; and
- b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured P & A Holdings, Inc.		Policy Number 4714156/1
Effective Date of This Endorsement 11/05/2006	Authorized Representative	
EPL 4300 (01-06)	16905-714156-421093	CT 44900 (01-06)

EXHIBIT B

027



### Addition to Section V. Waiver of Deductible if No Liability

In consideration of the premium paid for this **Policy**, it is understood and agreed that:

1. Section III. Definitions of the Common Policy Terms and Conditions Section of this **Policy** is amended by the addition of the following:

III.: **"No Liability"** means with respect to a **Claim** made against the **Insured(s)**:

1. a final judgment of no liability obtained prior to trial, in favor of all **Insureds**, by reason of a motion to dismiss or a motion for summary judgment, after the exhaustion of all appeals, or
2. a final judgment of no liability obtained after trial, in favor of all **Insureds**, after the exhaustion of appeals.

In no event shall the term **"No Liability"** apply to a **Claim** made against an **Insured** for which a settlement has occurred.

2. Section V. Limits of Liability and Deductibles of the Common Policy Terms and Conditions Section of this **Policy** is amended by the addition of the following:

V.: No Deductible shall apply, even as to **Costs of Defense**, to any **Claim** which is in the form of a civil action for monetary relief, in which:

1. there is a determination of **No Liability**; or
2. the **Claim** is dismissed or stipulated dismissed without prejudice and without any payment of any consideration by any **Insured**.

If there is a determination of **No Liability** in a **Claim**, the **Insurer** shall reimburse **Costs of Defense** paid by the **Insured** in such **Claim**.

If a **Claim** is dismissed or stipulated dismissed without prejudice and without any payment of any consideration by any **Insured**, the **Insurer** shall reimburse **Costs of Defense** paid by the **Insured** in such **Claim** 90 days after the date of the dismissal or stipulation so long as (i) the **Claim** (or any other **Claim** which together with such **Claim** would be deemed a single **Claim**) is not brought again within such 90 day period and (ii) the **Insured Entity** provides the **Insurer** with a written undertaking in a form satisfactory to the **Insurer** to repay the **Insurer** for such reimbursement in the event the **Claim** (or any other **Claim** which together with such **Claim** would be deemed a single **Claim**) is brought again after such 90 day period and before the expiration of the statute of limitations for such **Claim**.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured P & A Holdings, Inc.		Policy Number 4714156/1
Effective Date of This Endorsement 11/05/2006		Authorized Representative

EPL 4300 (01-06)

16910-714156-421093

CT 45014 (01-06)

**Admiral Insurance Company**

1255 Caldwell Road, Cherry Hill, NJ 08034

Page 1 of 1

### Modification to Section III. D. Independent Contractor Carve-out

In consideration of the premium paid for this Policy, it is understood and agreed that section III. Additional Definitions D. "Employee" of the Employment Practices Liability Insurance Coverage Section of this Policy is deleted in its entirety and replaced with the following:

III. D.: "Employee" means:

1. an individual whose labor or service is engaged by and directed by an **Insured Entity**, including part-time, leased, seasonal and temporary individuals, or
2. an individual who is a volunteer or intern for the **Insured Entity**, but only if the **Insured Entity** provides indemnification to such individual in the same manner as that provided to the **Insured Entity's** employees.

Independent contractors are not Employees. An individual's employment status shall be determined as of the date of the **Wrongful Act**.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured P & A Holdings, Inc.		Policy Number 4714156/1
Effective Date of This Endorsement 11/05/2006		Authorized Representative
EPL 4300 (01-06)	16971-714156-421093	EPL 43055 (01-06)

**Admiral Insurance Company**  
1255 Caldwell Road, Cherry Hill, NJ 08034

Page 1 of 1

**Addition to Section III. J.  
Third Party Liability Coverage**

In consideration of the premium paid for this Policy, it is understood and agreed that section III. Additional Definitions J. "Wrongful Act(s)" of the Employment Practices Liability Insurance Coverage Section of this Policy is amended by the addition of the following:

III. J.: "Wrongful Acts" also means any actual or alleged discrimination, sexual harassment or violation of any natural person's civil rights relating to such discrimination or sexual harassment, but only if such **Wrongful Act** is alleged to have been committed by an **Insured** and relates to a customer(s), client(s) or other natural person(s), other than an **Employee** or applicant for employment, with the **Insured Entity**.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured P & A Holdings, Inc.		Policy Number 4714156/1
Effective Date of This Endorsement 11/05/2006	Authorized Representative	
EPL 4300 (01-06)	16978-714156-421093	EPL 43113 (01-06)

## Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

Renewal  
Proposal Form

## Employment Practices Liability Insurance

## CLAIMS MADE WARNING FOR APPLICATION

## THIS PROPOSAL FORM IS FOR A CLAIMS MADE POLICY, RELATING TO CLAIMS MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE.

Whenever printed in this Proposal Form, the terms in boldface type shall have the same meanings as indicated in the Policy. This Proposal Form is to be completed with respect to the entire Insured Entity. Insured Entity as used herein is defined to include the Named Insured and any Subsidiaries.

Name of Named Insured P.A. Holdings, Inc.  
 Street Address 636 Broadway, Third Floor Suite \_\_\_\_\_  
 City San Diego, CA State CA Zip Code 92101

The Officer designated as agent of the Insured Entity and of all Insureds to receive any and all notices from the Insurer or their authorized representatives concerning this insurance:

Name CHRIS WATERS Title V. PRESIDENT E-mail Address CWaters@blachaven.com

## General Information (Provide details to all "Yes" answers by attachment)

- Form of organization: ☒ Corporation ☐ Sole Proprietorship ☐ Joint Venture  
☐ Partnership ☐ Limited Liability Corporation ☐ Other: \_\_\_\_\_
  - The Named Insured has been in continuous operation since: 1994 REDACTED
  - What is the Named Insured's Federal Employer Identification Number (FEIN) or Taxpayer Identification Number: \_\_\_\_\_
  - (a) What is the Insured Entity's Primary Standard Industry Code (SIC): \_\_\_\_\_  
 (b) Describe the Insured Entity's nature of operations: HOLDING COMPANY FOR BLACHAVEN POOLS
  - (a) Within the last 12 months, has the Insured Entity been involved in any bankruptcy proceeding? ☐ Yes ☒ No  
 (b) Within the next 12 months, is the Insured Entity contemplating filing a petition for protection under the bankruptcy code? ☐ Yes ☒ No
  - (a) Within the last 12 months, has the Insured Entity had any Subsidiary, plant, facility, branch or office closings, consolidations or layoffs? ☐ Yes ☒ No  
 (b) Within the next 24 months, does the Insured Entity anticipate any Subsidiary, plant, facility, branch or office closings, consolidations or layoffs? ☐ Yes ☒ No
- If "Yes", provide the following details by attachment: Date of event; number of Employees affected; whether outside employment counsel was consulted; and, whether severance packages were offered to all Employees affected.

## Current Employee Information (Provide details to all "Yes" answers by attachment)

- (a) Number of Employees: Do not include Leased Employees or Independent Contractors in numbers below.  

	Full Time	Part Time	Seasonal	Temporary
Current Year:	<u>413</u>	<u>1</u>		
Prior Year:	<u>433</u>	<u>5</u>		

  
 (b) How many Leased Employees does the Insured Entity employ annually? 0  
 (c) How many Independent Contractors does the Insured Entity employ annually? 468  
 (d) What is the Insured Entity's annual employee turnover rate for the last 12 months? 2 %
- Within the last 12 months, has there been any change (resignations, departures, retirements, etc.) in the position of the Chairman of the Board, President, Chief Executive Officer or Chief Financial Officer?  
 If "Yes", provide the following details by attachment: Name of individual and date of change. ☒ Yes ☐ No
- What percentage of the Insured Entity's employees currently earns more than \$75,000? REDACTED

\* Ronald Zabara: REDACTED (former President+CEO)

The term Policy is hereby amended to read Policy and the term Wrongful Employment Act(s) is hereby amended to read Wrongful Act(s) wherever they appear in this Proposal Form.

**Admiral Insurance Company**

10. Does the Insured Entity (provide details to "No" answers by attachment):
- (a) Currently employ a full time Human Resources professional? ☒ Yes ☐ No
  - (b) Utilize employment applications for all prospective Employees? ☒ Yes ☐ No
  - (c) Require the Human Resource Department to review and approve each proposed Employee termination? ☐ Yes ☒ No
  - (d) Have outside employment counsel review each proposed Employee termination? ☒ Yes ☐ No
  - (e) Conduct mandatory periodic Employee education regarding prohibited forms of harassment? ☒ Yes ☐ No
  - (f) Periodically have its employment policies and procedures reviewed by outside employment counsel? ☒ Yes ☐ No
  - (g) Periodically have its employment policies and procedures distributed to all Employees? ☒ Yes ☐ No
11. Indicate which formal written policies and procedures have been implemented and attach a copy of each.  
If "None", so state. ☐ None
- |                                                                                                            |                                                                                            |                                                                  |
|------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Employee Handbook / Manual                                             | <input checked="" type="checkbox"/> Anti-Harassment Policy, including Sexual Harassment    | <u>Employers with more than 50 Employees</u>                     |
| <input checked="" type="checkbox"/> Anti-Discrimination Policy – Equal Employment Opportunity (EEO) Policy | <input type="checkbox"/> Adherence to Employment "at-will" relationship with all Employees | <input checked="" type="checkbox"/> Family Medical Leave Act     |
|                                                                                                            |                                                                                            | <u>California Employers Only</u>                                 |
|                                                                                                            |                                                                                            | <input checked="" type="checkbox"/> California Family Rights Act |

**Litigation and Claim Information (Provide details to all "Yes" answers by attachment)**

12. During the last 5 years, has the Insured Entity or any of its directors, officers or Employees known of, or been involved in any lawsuit, charges, inquiries, investigations, grievances or other administrative hearings or proceedings before any of the following agencies and/or in any of the following forums, including both domestic or foreign equivalents?
- (a) National Labor Relations Board? ☐ Yes ☒ No
  - (b) Equal Employment Opportunity Commission? ☐ Yes ☒ No
  - (c) Office of Federal Contract Compliance Programs? ☐ Yes ☒ No
  - (d) U.S. Department of Labor? ☐ Yes ☒ No
  - (e) Any state or local government agency such as the Labor Department or fair employment agency? ☐ Yes ☒ No
  - (f) U.S. District or state court? ☐ Yes ☒ No
13. During the last 5 years, has any current or former Employee or third party made any Claim, or otherwise alleged discrimination, harassment, wrongful discharge and/or Wrongful Employment Acts against the Insured Entity or its directors, officers or Employees? ☒ Yes ☐ No
- A Claim is not limited to the filing of a lawsuit or complaint with the Equal Employment Opportunity Commission or similar state or local agency. A Claim may also include a written demand or threat by any current or former Employee seeking relief in connection with an employment-related dispute or grievance.

**IF "YES" TO ANY PART OF QUESTIONS 12. OR 13., PROVIDE FULL DETAILS FOR EACH ALLEGATION, EVEN IF THE MATTER HAS SINCE BEEN SETTLED OR OTHERWISE RESOLVED, BY COMPLETING A CLAIM SUPPLEMENTAL FORM EPL 4610 OR, BY PROVIDING THE FOLLOWING INFORMATION FOR EACH ALLEGATION BY ATTACHMENT:**

(a) Date Claim first made	(b) Claimant's Name	(c) Allegation	(d) Current Status
(e) Demand Amount	(f) Settlement (Indemnity) or Reserve Amount	(g) Attorney's fees	

## Admiral Insurance Company

## Previous Insurance Information (Provide details to all "Yes" answers by attachment)

14. Provide the following information regarding the Insured Entity's Employment Practices Liability insurance for the current policy year. If "None", so state. ☐ None
- | Insurance Carrier | Expiration Date | Limit of Liability | Retentions | Premium |
|-------------------|-----------------|--------------------|------------|---------|
| Admiral Ins Co    | 11/5/06         | \$                 | \$         | \$      |
15. Has the Extended Reporting Period (or Discovery Period) been exercised for the Insured Entity's most recent Employment Practices Liability Policy? ☐ Yes ☒ No

## Documents Required

16. Provide details to all "Yes" answers, when applicable, by attachment
17. Provide the following information on all Subsidiaries of the Insured Entity. If "None", so state. ☒ None
- | (a) Name | (b) Percent of ownership<br>(if less than 100 percent,<br>list minority owners) | (c) Nature of business<br>(Domestic or foreign) |
|----------|---------------------------------------------------------------------------------|-------------------------------------------------|
|          |                                                                                 |                                                 |
18. Provide the following information on all plants, facilities, branches or offices of the Insured Entity. If "None", so state. ☐ None
- | (a) Location | (b) Domestic or foreign | (c) Estimated number of Employees |
|--------------|-------------------------|-----------------------------------|
|              |                         | 413                               |

IT IS UNDERSTOOD AND AGREED THAT COVERAGE IS NOT PROVIDED FOR SUBSIDIARIES IN QUESTION 17. UNLESS THE INFORMATION REQUESTED ABOVE IS PROVIDED BY ATTACHMENT. ALSO, PROVIDE DETAILS TO QUESTION 18. BY ATTACHMENT, AS APPROPRIATE.

## Please Read Carefully

The undersigned, acting on behalf of all Insureds, declare that the statements set forth herein are true and correct and that thorough efforts have been made to obtain sufficient information from each and every Insured proposed for this insurance to facilitate the proper and accurate completion of this Proposal Form.

The undersigned agree that the particulars and statements contained in the Proposal Form and any material submitted herewith are their representations and that they are material and are the basis of the insurance contract. The undersigned further agree that the Proposal Form and any material submitted herewith shall be considered attached to and a part of the Policy. Any material submitted with the Proposal Form shall be maintained on file (either electronically or paper) with the Insurer and shall be deemed to be attached hereto as if physically attached.

It is further agreed that:

- if any significant change in the condition of the applicant is discovered between the date of this Proposal Form and the Policy inception date, which would render this Proposal Form inaccurate or incomplete, notice of such change will be reported in writing to the Insurer immediately;
- any Policy, if issued, will be in reliance upon the truth of such representations; provided, however, with respect to such statements and representations, no knowledge or information possessed by any Insureds, except for those person or persons who executed the Proposal Form, shall be imputed to any other Insureds and further provided that if any person who executed the Proposal Form knew that such statement or representation was inaccurate or incomplete, then this Policy will be void as to all Insureds;
- this Proposal Form has been completed as respects the entire Insured Entity;
- the signing of this Proposal Form does not bind the undersigned to purchase the insurance.

LARRY M. Ratz	Title: President CEO
Chairman of the Board of Directors, President, or Chief Executive Officer	
Chris Waters	Dated: 8/31/06
Print Name and Title	
CHRIS WATERS JR. & Co. Administrator	Dated: 8/31/06
Human Resources Manager (or equivalent position)	

This Carolina Casualty Insurance Company Proposal Form, including any material submitted herewith, shall be held in strictest confidence.

**A POLICY CANNOT BE ISSUED UNLESS THE PROPOSAL FORM IS PROPERLY SIGNED AND DATED.**

Please submit this Proposal Form including appropriate documentation to:

Monitor Liability Managers, Inc., 2050 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039

G.S. Levine Insurance Services	Dated: 9/25/06
Submitted by (PRODUCER)	
Cindy Anderson	0A91059
AGENT'S NAME (Print Name)	AGENT'S LICENSE NUMBER

## Admiral Insurance Company

**NOTICE TO COLORADO APPLICANTS:** IT IS UNLAWFUL TO KNOWINGLY PROVIDE FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE COMPANY. PENALTIES MAY INCLUDE IMPRISONMENT, FINES, DENIAL OF INSURANCE, AND CIVIL DAMAGES. ANY INSURANCE COMPANY OR AGENT OF AN INSURANCE COMPANY WHO KNOWINGLY PROVIDES FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO A POLICY HOLDER OR CLAIMANT FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE POLICY HOLDER OR CLAIMANT WITH REGARD TO A SETTLEMENT OR AWARD PAYABLE FROM INSURANCE PROCEEDS SHALL BE REPORTED TO THE COLORADO DIVISION OF INSURANCE WITHIN THE DEPARTMENT OF REGULATORY AGENCIES.

**NOTICE TO NEW YORK APPLICANTS:** ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME, AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION.

**NOTICE TO NEW MEXICO, PENNSYLVANIA APPLICANTS:** ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES.

**NOTICE TO APPLICANTS OF KENTUCKY:** ANY PERSON WHO KNOWINGLY, AND WITH INTENT TO INJURE, DEFRAUDS OR DECEIVES ANY INSURER OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM FOR THE PROCEEDS OF AN INSURANCE POLICY CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, IS GUILTY OF A CRIME AND IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.

**NOTICE TO APPLICANTS OF FLORIDA, MINNESOTA, NEW JERSEY, OHIO, AND OKLAHOMA:** ANY PERSON WHO KNOWINGLY, AND WITH INTENT TO INJURE, DEFRAUDS OR DECEIVES ANY INSURER OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM FOR THE PROCEEDS OF AN INSURANCE POLICY CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, IS GUILTY OF A FELONY AND IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.

**NOTICE TO DISTRICT OF COLUMBIA, MAINE, MASSACHUSETTS, TENNESSEE, AND VIRGINIA APPLICANTS:** IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE OR MISLEADING INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING THE COMPANY. PENALTIES INCLUDE IMPRISONMENT, FINES AND DENIAL OF INSURANCE BENEFITS.





## P&A HOLDINGS, INC.

P.O. Box 126878 • San Diego, CA 92112  
(619) 233-3522 • fax: (619) 233-3557 • [www.bluehaven.com](http://www.bluehaven.com)

September 7, 2006

Carolina Casualty Insurance Company  
4600 Touchton Road East, Bldg. 100, Suite 400  
Jacksonville, FL 32246

Re: Employment Practices Liability Insurance: Answer to question 13 on application

Date First Notified: .

**REDACTED**

Name(s):

Allegation: .

**REDACTED**

Current Status: Pre-litigation discovery, mediation unsuccessful

Demand Amount: Non Made Yet

Attorney's Fees:

**REDACTED**

*Common Policy Terms and Conditions Section*

# Admiral Insurance Company

**THIS IS A CLAIMS MADE POLICY.  
PLEASE READ IT CAREFULLY.**

**Admiral Insurance Company****CLAIMS MADE WARNING FOR POLICY**

NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY "CLAIM" FIRST MADE AGAINST THE INSUREDS AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD (IF APPLICABLE).

PLEASE READ AND REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

In consideration of the payment of the premium, in reliance on all statements in the **Proposal** and all other information provided to the **Insurer**, and subject to all provisions of this **Policy**, the **Insurer** and **Insureds** agree as follows:

**I. Common Policy Terms and Conditions Section**

The Common Policy Terms and Conditions Section of this **Policy** shall apply to all **Coverage Sections**. Unless stated to the contrary in any **Coverage Section**, the terms and conditions of each **Coverage Section** of this **Policy** shall apply only to that **Coverage Section** and shall not apply to any other **Coverage Section** of this **Policy**. If any provision in the Common Policy Terms and Conditions Section is inconsistent or in conflict with the terms and conditions of any **Coverage Section**, the terms and conditions of such **Coverage Section** shall control for the purposes of that **Coverage Section**. Any defined term referenced in this Common Policy Terms and Conditions Section and also defined in a **Coverage Section** shall, for the purposes of coverage under that **Coverage Section**, have the meaning set forth in that **Coverage Section**.

**II. Extended Reporting Period**

- A. If the **Named Insured** cancels or if the **Insurer** or the **Named Insured** refuses to renew this **Policy**, then the **Named Insured** shall have the right, upon payment of the appropriate percentage of the "full annual premium", as stated in Item 8. of the Declarations, to an extension of the coverage granted by this **Policy** with respect to any **Claim** first made and reported during the appropriate period of months, as stated in Item 8. of the Declarations, after the date upon which the **Policy Period** ends, but only with respect to any **Wrongful Act** fully occurring prior to the end of the **Policy Period** and otherwise covered by this **Policy**. Such period of months shall be referred to as the Extended Reporting Period. As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the **Policy Period** for all **Coverage Sections** purchased as part of this **Policy**. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the **Insurer** within 30 days of the effective date of cancellation or non-renewal.
- B. The additional premium for the Extended Reporting Period shall be fully earned at the inception of the Extended Reporting Period. The Extended Reporting Period is not cancelable.

**III. Definitions**

Whenever printed in boldface type and whether in the singular or plural form in this **Policy**, the following terms shall have the meanings indicated below.

- A. "**Coverage Section(s)**" means, individually or collectively, the purchased **Coverage Sections** listed in Item 3. of the Declarations and attached hereto.
- B. "**Insured Entity**" means the **Named Insured** and any **Subsidiary**.
- C. "**Insurer**" means the entity issuing this **Policy** as listed on the Declarations Page.
- D. "**Named Insured**" means the entity designated in Item 1. of the Declarations.
- E. "**Policy**" means, collectively, the Declarations, the Common Policy Terms and Conditions Section, the **Coverage Sections**, and the **Proposal**.
- F. "**Policy Period**" means the period of time from the inception date shown in Item 2. of the Declarations to the earlier of the expiration date shown in Item 2. of the Declarations or the effective date of cancellation of this **Policy**.
- G. "**Proposal**" means the Proposal Form(s) and any material submitted therewith.
- H. "**Subsidiary(ies)**" means:
  1. an entity of which the **Named Insured** owns on or before the inception of the **Policy Period** more than 50 percent of the issued and outstanding voting stock either directly or indirectly through one or more of its **Subsidiaries**, or
  2. an entity, subject to the terms of section V. A. of the **Coverage Section(s)**, that the **Insured Entity** forms or acquires during the **Policy Period**.

**IV. Exclusions**

The **Insurer** shall not be liable to make any payment for **Loss** in connection with a **Claim** made against any **Insured**:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged nuclear reaction, radiation or contamination, regardless of cause.

**Admiral Insurance Company****V. Limits of Liability and Deductibles**

- A. The Limits of Liability stated in Item 4. of the Declarations are the limits of the **Insurer's** liability for all **Loss** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** and the Extended Reporting Period (if purchased). The Limits of Liability for the Extended Reporting Period shall be part of, and not in addition to, the Limits of Liability stated in Item 4. of the Declarations. In the event the Limits of Liability stated in Item 4. of the Declarations are exhausted by payment of **Loss**, or have been tendered to or on behalf of the **Insured**, then any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished.
- B. The maximum Limit of Liability for all **Claims** under this **Policy** shall not exceed the aggregate Limit of Liability stated in Item 4. B. of the Declarations.
- C. **Costs of Defense** are not payable by the **Insurer** in addition to any applicable Limits of Liability. **Costs of Defense** are part of **Loss** and as such are subject to the applicable Limits of Liability for **Loss**.
- D. The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Deductible amount stated in Item 5. of the Declarations. Such Deductible amount shall be borne by the **Named Insured** with regard to all **Loss** arising thereunder. In the event a **Claim** is covered under more than one **Coverage Section**, the largest applicable Deductible shall apply.
- E. One Deductible amount shall apply to each and every **Claim**. If the **Insurer** advances any **Loss** within the Deductible, the **Named Insured** shall, upon written demand, reimburse the **Insurer** for such amounts within 30 days. If the **Named Insured** fails to pay the Deductible, then all **Insureds** shall be jointly and severally obligated to pay the Deductible. Any funds so advanced by the **Insurer** shall serve to reduce the Limit of Liability to the extent that they are not repaid to the **Insurer**. If the **Insurer** brings suit to collect the Deductible, then the **Insured** responsible to pay the Deductible also shall pay the legal fees, costs and expenses incurred by the **Insurer** to collect the Deductible.

**VI. Defense, Cooperation and Settlements**

- A. An **Insured** shall not admit liability, enter into any settlement agreement, stipulate to any judgment, agree to arbitration, or incur **Costs of Defense** without the **Insurer's** prior written consent. The **Insurer's** consent shall not be unreasonably withheld, provided that the **Insurer** shall be entitled to full information and all particulars it may request in order to reach a decision regarding such consent. Any **Loss** incurred and settlements agreed to prior to the **Insurer** giving its consent shall not be covered hereunder.
- B. The **Insurer** shall have the right and the duty to defend any **Claim** for **Damages** which are covered by this **Policy**. The **Insurer's** right and duty to defend any **Claim** shall end when the applicable Limits of Liability stated in Item 4. of the Declarations has been exhausted by the payment of **Loss**, or has been tendered to, or on behalf of, the **Insured** or to a court of competent jurisdiction. The **Insurer** has no obligation to provide **Costs of Defense** for any **Claim** for **Damages** not covered by this **Policy**.
- C. Each **Insured** shall cooperate with the **Insurer** in the defense and settlement of any **Claim**, and in enforcing any right of contribution or indemnity against any person or organization that may be liable to the **Insured**, at no cost to the **Insurer**. Upon the request of the **Insurer**, the **Insured** shall submit to examination and interrogation, under oath if required by a representative of the **Insurer**, and shall attend hearings, depositions and trials, assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, as well as giving written statements to the **Insurer's** representatives, and meeting with such representatives for purposes of investigation or defense, all without charge to the **Insurer**.
- D. The **Insurer** shall not settle any **Claim** without the **Named Insured's** consent. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by the **Insurer**, which is acceptable to the claimant, and shall elect to contest the **Claim**, or continue any civil, criminal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Insurer's** liability for the **Claim** shall be the amount for which the **Claim** could have been settled, including **Costs of Defense** incurred up to the date of such refusal, and 75 percent of such **Loss** excess of the amount for which the **Claim** could have been settled. It is a condition of this insurance that the remaining 25 percent of such **Loss** shall be borne by the **Insureds** at their own risk. Such amounts are subject to the provisions of section V. of the Common Policy Terms and Conditions Section of this **Policy**.

**VII. Notice of Claim and Multiple Claims**

- A. As a condition precedent to their rights under this **Policy**, an **Insured** shall give the **Insurer** written notice of any **Claim** as soon as practicable, but in no event later than 90 days after such **Claim** is first made.
- B. If during the **Policy Period** or the Extended Reporting Period (if applicable) the **Insureds** become aware of any fact, circumstance or situation which may reasonably be expected to give rise to a **Claim** being made against any **Insured** and shall give written notice to the **Insurer**, as soon as practicable (but prior to the expiration of or cancellation of the **Policy**), of:
  - 1. the specific fact, circumstance or situation, with full details as to dates, persons, and entities involved; and
  - 2. the injury or damages which may result therefrom; and
  - 3. the circumstances by which the **Insured** first became aware thereof;

**Admiral Insurance Company**

then any **Claim** subsequently made arising out of such fact, circumstance or situation shall be deemed to have been made when notice was first given to the **Insurer**.

- C. All **Claims** based upon or arising out of the same **Wrongful Act** or any **Related Wrongful Acts**, or one or more series of any similar, repeated or continuous **Wrongful Acts** or **Related Wrongful Acts**, shall be considered a single **Claim**. Each **Claim** shall be deemed to be first made at the earliest of the following times:
1. when the earliest **Claim** arising out of such **Wrongful Act** or **Related Wrongful Acts** is first made, or
  2. when notice pursuant to section VII. B. above of a fact, circumstance or situation giving rise to such **Claim** is given.
- D. In addition to furnishing the notice as provided in sections VII. A. and VII. B. above, the **Insureds** shall give the **Insurer** such information and cooperation as it may reasonably require and shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith.

**VIII. General Conditions****A. Termination of Policy and Non-Renewal**

1. This **Policy** shall terminate at the earliest of the following times:
  - a. upon the receipt by the **Insurer** of written notice of cancellation from the **Named Insured**;
  - b. upon expiration of the **Policy Period** as set forth in Item 2. of the Declarations;
  - c. at such other time as may be agreed between the **Named Insured** and the **Insurer**; or
  - d. upon written notice by the **Insurer** of cancellation for non-payment of premium.
2. The **Insurer** may not cancel this **Policy** except for non-payment of any premium when due. The **Insurer** shall provide at least 20 days written notice to the **Named Insured** prior to any cancellation for non-payment of any premium.
3. If this **Policy** is cancelled by the **Named Insured**, the **Insurer** shall retain the customary short rate proportion of the premium herein. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
4. If the **Insurer** decides not to renew this **Policy**, the **Insurer** shall provide written notice to the **Named Insured** at least 60 days prior to the end of the **Policy Period**. The notice shall include the reason for such non-renewal.
5. Any notices to be given to the **Named Insured** under this section VIII. shall be provided to the **Named Insured** at the last known principal address and to its insurance agent or broker. The mailing by certified mail of such notice shall be sufficient.

**B. Proposal**

The **Proposal** is the basis of this **Policy** and is incorporated in and constitutes a part of this **Policy**. A copy of the **Proposal Form(s)** is attached hereto. Any material submitted with the **Proposal Form(s)** shall be maintained on file with the **Insurer** and shall be deemed to be attached hereto as if physically attached. It is agreed by the **Insureds** that the statements in the **Proposal** are their representations, that they are material and that this **Policy** is issued in reliance upon the truth of such representations. With respect to such statements and representations, no knowledge or information possessed by any **Insureds** shall be imputed to any other **Insureds**.

If any person or persons knew as of the **Policy** inception date that such declarations and statements contained in the **Proposal Form(s)** were untrue, inaccurate or incomplete, then this **Policy** will be void as to that person or persons.

However, if the Chairperson of the Board of Directors, President, Chief Executive Officer, or Chief Financial Officer of the **Insured Entity** knew as of the **Policy** inception date that such declarations and statements contained in the **Proposal Form(s)** were untrue, inaccurate or incomplete, then this **Policy** will be void as to that person or persons and the **Insured Entity**.

**C. Action Against the Insurer**

No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this **Policy**, nor until the amount of the **Insureds'** obligation to pay shall have been finally determined either by judgment against the **Insureds** after actual trial or by written agreement of the **Insureds**, the claimant and the **Insurer**.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this **Policy** to the extent of the insurance afforded by this **Policy**. No person or organization shall have any right under this **Policy** to join the **Insurer** as party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the **Insurer** be impleaded by the **Insureds** or their legal representatives. Bankruptcy or insolvency of the **Insureds** or of their estates shall not relieve the **Insurer** of any of its obligations hereunder.



**Admiral Insurance Company****D. Changes in Exposure**

If during this **Policy Period**:

1. the **Named Insured** shall consolidate or merge with or into, or sell all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert, or
2. any person or entity or group of persons and/or entities acting in concert shall acquire an amount of the outstanding securities representing more than 50 percent of the voting power for the election of Directors of the **Named Insured**, or acquires the voting rights of such an amount of such securities;

(either of the above events herein referred to as "Transaction")

then, this **Policy** shall continue in full force and effect as to any **Wrongful Acts** fully occurring prior to the Transaction, but there shall be no coverage afforded by any provision of this **Policy** for any actual or alleged **Wrongful Acts** occurring after the Transaction. This **Policy** may not be cancelled following a Transaction and the entire premium for this **Policy** shall be deemed fully earned as of the Transaction. The **Named Insured** shall give the **Insurer** written notice of the Transaction as soon as practicable but not later than 30 days after the Transaction.

In the event of a Transaction, the **Named Insured** shall have the right, upon payment of an additional 75 percent of the "full annual premium", to an extension of the coverage granted by this **Policy** with respect to any **Claim** first made and reported during the 12 months after the Transaction, but only with respect to any **Wrongful Act** fully occurring prior to the Transaction and otherwise covered by this **Policy**. Such 12 month period shall be referred to as the Run Off Period. As used herein, "full annual premium" means the premium level in effect immediately prior to the Transaction for all **Coverage Sections** purchased as part of this **Policy**. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the **Insurer** within 60 days of the Transaction.

In the event of a Transaction, the **Named Insured** shall have the right to purchase the Run Off Period but shall have no right to purchase the Extended Reporting Period described in section II. of this **Policy**.

The additional premium for the Run Off Period shall be fully earned at the inception of the Run Off Period. The Run Off Period is not cancelable. The Limit of Liability for the Run Off Period shall be part of, and not in addition to, the applicable Limits of Liability stated in Item 4. of the Declarations.

**E. Subrogation**

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery thereof, and the **Insureds** shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insureds**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this **Policy** unless such **Insured** has been convicted of a criminal act, or been judicially determined to have committed a deliberate fraudulent act, or obtained any profit or advantage to which such **Insured** was not legally entitled.

**F. Assignment**

This **Policy** and any and all rights hereunder are not assignable without the written consent of the **Insurer**.

**G. Entire Agreement**

By acceptance of this **Policy**, the **Insureds** and the **Insurer** agree that this **Policy** and any written endorsements attached hereto constitute the entire agreement between the parties.

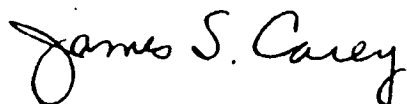
**H. Representation by Named Insured**

It is agreed that the **Named Insured** shall act on behalf of its **Subsidiaries** and all **Insureds** with respect to the giving and receiving of notices, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the receipt and acceptance of any endorsements issued to form a part of this **Policy** and the exercising or declining to exercise any right to an Extended Reporting Period.

**I. Coverage Territory**

This **Policy** applies to any **Wrongful Act** taking place anywhere in the world.

In witness whereof, the **Insurer** has caused this **Policy** to be signed by its President and Chief Executive Officer and Secretary, but this **Policy** shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the **Insurer**.



President and Chief Executive Officer



Secretary

*Employment Practices Liability Insurance  
Coverage Section*

Admiral Insurance Company

THIS IS A CLAIMS MADE POLICY.  
PLEASE READ IT CAREFULLY.

**Admiral Insurance Company****CLAIMS MADE WARNING FOR POLICY**

NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY "CLAIM" FIRST MADE AGAINST THE INSUREDS AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD (IF APPLICABLE).

PLEASE READ AND REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

In consideration of the payment of the premium, in reliance on all statements in the **Proposal** and all other information provided to the **Insurer**, and subject to all provisions of this **Policy**, the **Insurer** and **Insureds** agree as follows:

**I. Insuring Agreement****Employment Practices Liability Insurance**

This **Policy** shall pay on behalf of the **Insureds** all **Loss** arising from any **Claim** first made against the **Insureds** during the **Policy Period** and reported to the **Insurer** in writing during the **Policy Period** or within 90 days thereafter, for any **Wrongful Act**.

**II. Extended Reporting Period**

Refer to Common Policy Terms and Conditions Section.

**III. Additional Definitions**

In addition to the Definitions listed in section III. of the Common Policy Terms and Conditions Section, whenever printed in boldface type, and whether in the singular or plural form, in this **Coverage Section** the following terms shall have the meanings indicated below.

- A. "**Claim(s)**" means a written demand for monetary or non-monetary relief or an administrative or regulatory investigation or proceeding commenced by or before a federal, state, local or foreign agency; provided, however, the term **Claim** shall not include any grievance or arbitration subject to a collective bargaining agreement. A **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.
- B. "**Costs of Defense**" means reasonable and necessary fees, costs and expenses (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a covered or potentially covered **Claim** against the **Insureds**, but excluding salaries, wages, overhead or benefit expenses associated with any **Insured**, or any amount covered by the duty to defend obligation of any other insurer.
- C. "**Damages**" means a monetary judgment (including back pay and front pay), award or settlement, pre-judgment interest and post-judgment interest; provided, however, **Damages** shall not include:
  - 1. taxes (provided, however, that the **Insurer** will reimburse an **Insured Entity** for any employer share of payroll taxes on any portion of damages or settlements which constitute back pay otherwise considered **Damages**), civil or criminal fines, or penalties imposed by law, or
  - 2. payment of insurance, disability, pension, health or other plan benefits claimed by or on behalf of any former or current **Employee**, or that a claimant would have been entitled to as an **Employee** had the **Insured Entity** provided the claimant with a continuation of insurance, or
  - 3. costs incurred by any **Insured** to make any building or property more accessible or accommodating to any disabled person, or
  - 4. commissions, bonuses, profit sharing or severance payments, or
  - 5. future wages or benefits of any reinstated **Employee** or wages or benefits associated with the continued employment of an **Employee**, or
  - 6. any actual or potential ownership interest in the **Insured Entity** or the value of any such ownership interest, including, but not limited to, stock and/or stock options, or
  - 7. any matter deemed uninsurable under the law pursuant to which this **Policy** shall be construed.



**Admiral Insurance Company**

**Damages** also means, where insurable, liquidated, punitive, or exemplary damages, or any multiplied damages award in excess of the amount so multiplied. Such coverage for liquidated, punitive, exemplary or multiplied damages is part of and not in addition to the Limits of Liability, and any payment of such damages shall serve to reduce the Limits of Liability. Only for the purpose of resolving any dispute between the **Insurer** and the **Insured** regarding whether such liquidated, punitive, exemplary or multiplied damages are insurable under this **Policy**, the law of the jurisdiction most favorable to the insurability of those damages shall control, provided that such jurisdiction is where:

1. those damages were awarded or imposed, or
2. any **Wrongful Act** occurred for which such damages were awarded or imposed, or
3. the **Insured** resides, is incorporated or has its principal place of business, or
4. the **Insurer** is incorporated or has its principal place of business.

D. **"Employee"** means:

1. an individual whose labor or service is engaged by and directed by an **Insured Entity**, including part-time, leased, seasonal and temporary individuals, or
2. an individual who is a volunteer, intern, or independent contractor for the **Insured Entity**, but only if the **Insured Entity** provides indemnification to such individual in the same manner as that provided to the **Insured Entity's** employees.

An individual's employment status shall be determined as of the date of the **Wrongful Act**.

E. **"Harassment"** means unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal, visual or physical conduct of a sexual or non-sexual nature that:

1. is explicitly or implicitly made a condition of employment, or
2. are used as a basis for employment decisions, or
3. create a work environment that interferes with performance.

**Harassment** also means assault or battery, but only if related to a charge of sexual harassment.

F. **"Insured(s)"** means:

1. any director, officer, or **Employee** of an **Insured Entity** while acting solely within the course and scope of employment with the **Insured Entity**, or
2. an **Insured Entity**.

This **Coverage Section** shall cover **Loss** arising from a **Claim** made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an individual **Insured** for a **Claim** arising solely out of his or her status as the spouse of an individual **Insured**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the individual **Insured** and the spouse, or property transferred from the individual **Insured** to the spouse; provided, however, this extension shall not afford coverage for any **Claim** for any **Wrongful Act** of the spouse, but shall apply only to **Claims** arising out of any **Wrongful Act** of an individual **Insured**.

G. **"Loss"** means **Damages** and **Costs of Defense**.

H. **"Prior and Pending Litigation Date"** means the date set forth in Item 7. 1. of the Declarations with respect to the Employment Practices Liability Insurance **Coverage Section**.

I. **"Related Wrongful Act(s)"** means **Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.

J. **"Wrongful Act(s)"** means any actual or alleged act by an **Insured** arising from an actual or potential employment relationship with the claimant for:

1. discrimination or **Harassment** because of race, color, religion, age, sex, disability, pregnancy, national origin, sexual orientation, marital status, or any other basis prohibited by law which results in termination of the employment relationship, or demotion or failure or refusal to hire or promote, or failure to accommodate an **Employee** or potential **Employee**, or denial of an employment privilege, or the taking of any adverse or differential employment action, or
2. sexual **Harassment** including unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature that is made a condition of employment, is used as a basis for employment decisions, or creates an intimidating, hostile or offensive work environment that interferes with work performance, or
3. termination, constructive discharge, wrongful failure to hire, wrongful demotion, negligent retention, negligent supervision, negligent hiring, retaliation, misrepresentation, infliction of emotional distress, defamation, invasion of privacy, humiliation, wrongful evaluation, or breach of any implied contract or implied agreement relating to employment, whether arising out of any personnel manual, policy statement or oral representation.

## Admiral Insurance Company

### IV. Additional Exclusions

In addition to the Exclusions listed in section IV. of the Common Policy Terms and Conditions Section, the **Insurer** shall not be liable to make any payment for **Loss** in connection with a **Claim** made against any **Insured**:

- A. for:
  - 1. physical injury to or destruction of any tangible property, including the loss of use thereof, or
  - 2. bodily injury, sickness, disease, and death; provided, however, this exclusion shall not apply to the following personal injury damages or causes of action in connection with a **Claim** for a **Wrongful Act** for: emotional distress, mental anguish, defamation, invasion of privacy or humiliation;
- B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged violation of the Employee Retirement Income Security Act of 1974, including amendments thereto;
- C. for any actual or alleged breach of any oral or written contract or agreement; provided, however, this exclusion shall not apply to any **Claim** for any actual or alleged breach of any implied contract or implied agreement relating to employment, whether arising out of any personnel manual, policy statement or oral representation;
- D. which is insured in whole or in part by another valid policy, except with respect to any excess beyond the amount or amounts of coverage under such other policy whether such other policy is stated to be primary, contributory, excess, contingent or otherwise;
- E. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
  - 1. any **Wrongful Act** alleged in any claim which has been reported, or in any circumstance of which notice has been given, prior to the **Policy Period** under any other policy, or
  - 2. any other **Wrongful Act** whenever occurring, which together with a **Wrongful Act** which has been the subject of such claim or notice, would constitute **Related Wrongful Acts**;
- F. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
  - 1. any prior or pending litigation, administrative or arbitration proceeding as of the **Prior and Pending Litigation Date**, or
  - 2. any fact, circumstance, situation, transaction or event underlying or alleged in such litigation, administrative or arbitration proceeding,
 regardless of the legal theory upon which such **Claim** is predicated;
- G. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged violation of the Worker's Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, the National Labor Relations Act, including amendments thereto, or any similar provisions of any federal, state, local or foreign statutory or common law; provided, however, this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of the claimant by the **Insured** on account of the claimant's exercise of rights pursuant to any such law;
- H. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged obligations under any workers' compensation, social security, disability benefits, or unemployment compensation law, including amendments thereto, or any similar provisions of any federal, state, local or foreign statutory or common law; provided, however, this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of the claimant by the **Insured** on account of the claimant's exercise of rights pursuant to any such law;
- I. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any federal, state, local or foreign wage and hour laws, including, without limitation, the Fair Labor Standards Act; provided, however, this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of the claimant by the **Insured** on account of the claimant's exercise of rights pursuant to any such law or amounts owed under the Equal Pay Act of 1963.

## Admiral Insurance Company

## V. Changes in Exposure

## A. Acquisition or Creation of a Subsidiary

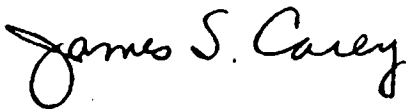
If during this Policy Period the Insured Entity forms or acquires a Subsidiary, then this Policy shall provide coverage pursuant to this Coverage Section:

1. automatically for an entity whose assets total less than 25 percent of the total consolidated assets of the Insured Entity as of the Policy inception date; or
2. for an entity whose total assets are equal to or greater than 25 percent of the total consolidated assets of the Insured Entity as of the Policy inception date, but only upon the condition that within 90 days of it becoming a Subsidiary, the Named Insured shall have provided the Insurer with full particulars of the new Subsidiary and agreed to any additional premium and/or amendment of the provisions of this Policy required by the Insurer relating to such new Subsidiary. Further, coverage as shall be afforded to the new Subsidiary is conditioned upon the Named Insured paying when due any additional premium required by the Insurer relating to such new Subsidiary.

An entity becomes a Subsidiary when the Insured Entity owns more than 50 percent of the issued and outstanding voting stock either directly or indirectly through one or more of its Subsidiaries. An entity ceases to be a Subsidiary when the Insured Entity ceases to own more than 50 percent of the issued and outstanding voting stock either directly or indirectly through one or more of its Subsidiaries.

In all events, coverage afforded pursuant to this Coverage Section with respect to a Claim made against a Subsidiary shall only apply for Wrongful Acts committed or allegedly committed after the effective time that such Subsidiary became a Subsidiary and prior to the time that such Subsidiary ceased to be a Subsidiary.

In witness whereof, the Insurer has caused this Policy to be signed by its President and Chief Executive Officer and Secretary, but this Policy shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the Insurer.



President and Chief Executive Officer



Secretary

**UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

**# 152177 - MB  
\* \* C O P Y \* \*  
June 23, 2008  
12:37:42**

**Civ Fil Non-Pris**  
USAO #: 08CV1103 CIVIL FILING  
Judge.: JEFFREY T MILLER  
Amount.: \$350.00 CK  
Check#: BC71078

**Total-> \$350.00**

FROM: ADMIRAL INSURANCE CO VS  
BLUE HAVEN NATL MGMT, ET AL

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

ADMIRAL INSURANCE COMPANY

(b) County of Residence of First Listed Plaintiff Canden, N.J.  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert D. Hoffman;Charlston, Revich & Wollitz LLP; 1925 Century  
Park East, Suite 1250, L.A. California 90067 (310) 551-7016

## DEFENDANTS

BLUE HAVEN NATIONAL MANAGEMENT, INC.; P&A  
HOLDINGS INC. VICTORIA, BRITISH COLUMBIA

County of Residence of First Listed Defendant SC

(EXCEPT IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (Firm Name)

08 CV 1103 JM RBB

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |                                         |                            |                                       |                                                               |                                       |                                       |
|-----------------------------------------|----------------------------|---------------------------------------|---------------------------------------------------------------|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4            | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3            | Foreign Nation                                                | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13950) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. Section 1332(a)(1), diversity jurisdiction

Brief description of cause:

Declaratory relief on lack of potential coverage for a defendant entity in underlying suit; reimbursement.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/20/2008

SIGNATURE OF ATTORNEY OF RECORD

Robert D. Hoffman

Robert D. Hoffman

FOR OFFICE USE ONLY

RECEIPT #

152177

AMOUNT

\$350.00

APPLYING IFP

JUDGE

MAG. JUDGE

MD 06/23/08

ORIGINAL

CR